

UNITED STATES OF AMERICA :
:
v. : **CRIMINAL NO. 23-323**
:
TYLER MARX :

1 The government has moved to dismiss Counts Four and Five for lack of
venue.

TANNER ROUGHTON also grew up in Virginia Beach and was friends with MARX in high school. Upon graduating from high school in May 2016, MARX attended the University of Virginia in Charlottesville while ROUGHTON briefly attended Virginia Commonwealth University in Richmond, before dropping out of school to pursue a career in cryptocurrency full-time.

While still in high school, MARX and ROUGHTON took an interest in cryptocurrencies. That interest continued when they matriculated to college. In order to profit from their interest in cybercurrency, MARX and ROUGHTON borrowed an old penny-stock “pump and dump” scheme involving “pumping” up the value of a low-value stock (or, in this case, cybercurrency), and then, “dumping” the stock at a higher price. Instead of perpetrating their pump-and-dump scheme in a boiler room or on the stock exchange floor, MARX and ROUGHTON did it on the web forums and a cybercurrency exchange where traders in these coins typically look for trading information.

A cybercurrency exchange is an online marketplace where users can buy and sell cryptocurrencies. Here, MARX and ROUGHTON used an exchange called Poloniex. Poloniex offered services for digital currency similar to the services provided by online stock brokerages; they allow customers to fund a trading account and execute trades, charging customers fees for each trade. Users could see trading and order data which would allow users to get data about the

cryptocurrencies they wished to trade. Users could also chat about cryptocurrencies on Poloniex using a platform called "Trollbox." Many traders used information disseminated on Trollbox to influence their trading decisions.

As explained below, MARX's first foray into the pump-and-dump world was through a "dead," low-value altcoin (i.e., a cybercurrency that is not Bitcoin, which is the primary digital currency) called "1Credit" or "1CR." MARX and ROUGHTON aggressively "pumped" 1CR and the associated 1CR arcade game and was able to make approximately \$150,000 in profit. MARX and ROUGHTON then repeated the scheme with a second "dead" coin called Belacoin. In a more sophisticated operation, MARX and ROUGHTON were able to generate almost \$2.4 million in profits from this pump and dump scheme.

B. 1Credit/1CR

Cybercurrency exchanges such as Poloniex included many "dead," low-value cybercurrencies which could be purchased for literally pennies per coin. Whatever hopes and dreams the developers of these cybercurrencies possessed at the dawn of their existence had long faded into the evening dusk. There was virtually no market for these "dead" cybercurrencies and very little trading occurred. They managed to exist for a time on life support until Poloniex finally pulled the plug and delisted them.

The first "dead" cybercurrency which MARX identified was called 1Credit

or 1CR. 1CR was originally a gaming token. In 2016, MARX contacted the developer of 1CR with a proposal to create an arcade game could be played using 1CR and would pay out 1CR as a reward for playing. The developer agreed. MARX and ROUGHTON then began the "re-launch" of 1CR.

By September 2016, MARX, and to a lesser extent ROUGHTON, began hyping 1CR on various cybercurrency forums. MARX created a Twitter account in which he pretended to be a cybercurrency expert. MARX and ROUGHTON made thousands of promotional statements in order to increase the price of 1CR. For example, MARX and ROUGHTON made statements such as:

"1cr is going so high"

"1CR coming in hot"

"buy wall growing on 1CR its about to soar"

"1CR broke out the top Bollinger Band"

"Oh yeah! 1CR is spiking high"

Throughout the fall of 2016, MARX and ROUGHTON made posts on Poloniex's chatroom called Trollbox using the following usernames: "Coconut" (MARX) and "twrvb" (ROUGHTON). As noted above, cybercurrency traders used Trollbox to learn and share information about different coins. MARX and ROUGHTON used Trollbox to post supposed positive news about 1CRedit, including that it would be "relaunching" and "coming to a new exchange." The

purpose of this was to drive up the price of the coin so that MARX and ROUGHTON could profit from that price increase. While posting positive news about 1CRedit, MARX and ROUGHTON also lied and disclaimed that they were behind the coin.

According to records from Poloniex, the Trollbox chat username “twrvb” was registered to ROUGHTON and the Trollbox username “Coconut” was registered to MARX. For example, on September 9, 2016, MARX and ROUGHTON had been touting 1CR for several days. ROUGHTON stated, “1cr spiking. 1cr is going so high. 1cr now 46% up. 1cr market cap is only 43k, it's the cheapest market cap on all of Poloniex.” MARX stated, “1CR spiking? lol buy wall on 1cr. don't discount 1CR, it's rising.” Despite touting 1CR as a “buy,” MARX and ROUGHTON sold 1CR coins and profited on the price increase.

Similarly, on September 24-25, 2016, MARX and ROUGHTON continued to hype 1CR. ROUGHTON stated, “Have you guys heard of the 1CR relaunch? I'm thinking about stocking up bags of 1CR.” ROUGHTON continued: “[1CR has] been around for a little but I think its getting relaunched and its going to be used for some games.” Despite touting 1CR, MARX and ROUGHTON sold 1CR coins and profited on the price increase.

On September 27, 2016, MARX posted: “Guys don't grill me about 1CR haha I don't know everything about it Relaunches are USUALLY (but not

always) great opportunities to make money. . . . And I just wouldn't be surprised of 1CR got a big spike. They are pretty organized about this relaunch. . . . Does it matter if the coin increases in value due to hype? All that matters is that people who invest in 1CR at 300 sell out at 1200 make an absolute killing . . . I'm leaving for now I'll be tweeing later! Especially since 1CR has a release later today . . . I'll be sure to retweet it as soon as I see it Or if any of you guys notice it first please tweet at me! I want to see it ASAp Do your own research on 1CR though."

On September 28, 2016, MARX posted: "Can we discuss why CGA is spiking more than 1CR? CGA just has a measly countdown website whereas 1CR released something really solid. And 1CR has an organized team behind it that has very steady releases." ROUGHTON then posted: "1cr could be a longterm hold . . . 1CR website making big moves. i would put alot more eggs in that basket."

On September 28, 2016, MARX posted: "The past 6 days of 1CR trading have closed above where they opened ... 1cr looking strong. 1cr hasn't had a red candle day in 8 days . . . Know any other coins that are as active as 1CR? I'd love to invest in them too. Now if 1CR ever were to get delisted, investors don't lose it all. I'm going to be holding 1CR through the release of the news tomorrow. Although I've decided that I'm holding 1CR till the October main release . . . See I'm scared of leaving 1CR. I took profits on 1CR and sold out at 300 thinking I could buy back cheaper."

On September 30, 2016, responding to concerns that 1CR was a "pump and dump," MARX stated, "1CR is so strong. I kind of expect to wake up tomorrow and see 1CR at 600 or 700 I've been predicting 1CR since it was at .002 If it was a pump and dump, why has it increased every single day for the past 8 days? pump and dumps last 30 minutes, this is solid, organic, 20%-per-day growth on 1CR." MARX continued, "1CR is having news on Sunday so the price should spike today and tomorrow ... 1CR released news today when their price was .0065 and now they're approaching .008 ... You think that big buy on 1CR was a dev buying? panicbuyer, 1CRlaunch.com."

When other users in the Trollbox chatrooms pointed out that "Coconut" (MARX) appeared to be behind 1CR and appeared to be "shilling" or "pumping" 1CR's value, "twrvb" (ROUGHTON) stepped in to try to protect Coconut's credibility. For example, on October 2, 2016, when a Trollbox user named "Anondran" posted, "and the best shiller award goes to Coconut :d," ROUGHTON responded, "Anondran is mad because Coconut discovered 1CR first and is now becoming the cool guy to follow on Twitter ... Anondran is mad because he's old news now ... gotta be feeling insecure."

In addition to hyping 1CR, MARX and ROUGHTON also lied about their involvement in 1CR. For example, on September 27, 2016, MARX stated, "I know that 1CR has been passed on to new [developers]. Guys don't grill me about

1CR haha I don't know everything about it ... And I just wouldn't be surprised if 1CR got a big spike. *They* are pretty organized about this relaunch. All that matters is that people who invest in 1CR at 300 and sell out at 1200 make an absolute killing. Especially since 1CR has a release later today.” [emphasis added] Thus, in this post, MARX not only denied his involvement in 1CR, but by using the pronoun “*they*,” he lied by indicating that someone else controlled 1CR's relaunch.

Similarly, on September 28, 2016, MARX stated, “I disagree that 1CR is a scam.” He continued, “The main [developer] left 1CR, and the community stepped up to fill the void . . . the blockchain for 1CR is fixed and *they're* ready to compete.” [emphasis added] Again, MARX used the third person to refer to 1CR rather than admitted that he controlled the 1CR development.

ROUGHTON also used the third person when referring to 1CR. On October 7, 2016, ROUGHTON stated, “And if 1CR is actually able to deliver a real game to us alpha testers, *they'll* prove that they're doing real work... what it does is proves that 1CR is not a scam.” On October 10, 2016, in discussing 1CR, ROUGHTON stated, “*they* have the license for the game so *they* can use it and promote it.” ROUGHTON continued, “the developer of the game saying publicly that 1CR is all in the green *they* literally just proved they're not a scam.” On October 16, 2016, in discussing 1CR's new arcade, ROUGHTON stated, “The 20th is the release of their arcade gaming site ... 1cr investor growth report coming

out tomorrow time to see what *theyre* [sic] really made of.”

MARX continuously extolled the virtues of 1CR and predicted that the value of the currency would rise in the hopes that others interested in investing in cypercurrencies would buy 1CR. By investing a few hundred dollars, MARX and ROUGHTON could trade 1CR extensively to give it the appearance of market volume – that this was a coin that was coming to life again. MARX and ROUGHTON also induced their friends and family to trade 1CR to give the appearance of additional trading volume.

In addition to the promotional statements, MARX and ROUGHTON also made a number of false and misleading statements in furtherance of the scheme. For example:

- 9/27/2016 17:29: Guys don't grill me about 1CR haha I don't know everything about it
- 9/27/2016 17:30: And I just wouldn't be surprised if 1CR got a big spike. They are pretty organized about this relaunch²

² In some of MARX's false statements, he pretended that he was not one of the developers of 1CR. To continue that false narrative, MARX referred to the developers of 1CR in the third by referring to them as "they" or "them." The government submits that all of these statements are misleading, because MARX and ROUGHTON were, in fact, insiders of 1CR.

- 9/28/2016: And 1CR has an organized team behind it that has very steady releases.
- 9/28/2016: I have yet to sell my 1CR though
- 9/28/2016: You got a coin like 1CR that's having an actual relaunch
- 9/28/2016: I disagree that 1CR is a scam
- 9/28/2016: I'm investing in 1CR because it's an active project with a tiny market cap
- 9/29/2016: I'm going to be holding 1CR through the release of the news tomorrow. Although I've decided that I'm holding 1CR till the October main release. See I'm scared of leaving 1CR.
- 9/29/2016: 1CR is having solid organic growth
- 9/30/2016: 1CR.. If it was a pump and dump, why has it increased every single day for the past 8 days? pump an dumps last 30 minutes, this is solid, organic, 20%-per-day growth on 1CR.
- 9/30/2016: I mean, there's clearly no one dumping 1CR
- 9/30/2016 19:12: and they say that they're bringing in people to do things that are out of their skillsets
- 9/30/2016 19:12: and they're following through with their word
- 9/30/2106 19:13: adiosMafia, I've been buying this whole way up

- 9/30/2016 19:24: They've engineered it so there's always some bigger, better news release in the future

A more complete review of the promotional and false statements was included in the government's response to the Bill of Particulars.

MARX and ROUGHTON succeeded in driving up the price of 1CR from virtually \$0 to almost \$8 per coin. Poloniex records showed that MARX controlled several accounts by using the same IP address – including accounts for ROUGHTON for other friends. MARX also used “buy walls” to artificially drive up the price and MARX often referenced those "buy walls" in his public comments about 1CR.

In so doing, MARX engaged in a classic “pump and dump” scheme. According to trading records, MARX would purchase 1CR, then, he would promote 1CR in the Trollbox chatroom. As MARX pumped 1CR to increase its price, he also sold it to profit from that increase. Most of the hype pre-dated the release of the game. MARX typically told prospective investors that the value of 1CR would spike once the game was released and that they should "buy now."

MARX and ROUGHTON pocketed roughly \$150,000 from the 1CR scam – the lion's share going to MARX. In reality, the arcade game which MARX was supposedly creating was nothing more than a Potemkin village to give the appearance that 1CR might have some utility. MARX and ROUGHTON's hype

managed to move the 1CR needle off \$0 for long enough to make a quick profit.

Once 1CR released its arcade game and the reality of the situation was exposed, the price of the currency collapsed. Poloniex finally delisted 1CR in December 2016. By January 2017, a 1CR coin returned to its pre-hype value of \$0.01. MARX then needed to find a new “dead” cybocurrency to pump and identified Belacoin.

C. Belacoin

MARX’s new idea was to revive the dead Belacoin by creating a use case for Belacoin, just like he did for 1CR. MARX applied the lesson he learned from 1CR to make the Belacoin fraud more sophisticated. To that end, MARX created an application called Belacam, which was similar to Instagram, that would use Belacoin. On Belacam, when someone posted a video which the user “liked,” rather than send a smiley face, the user would send the poster a Belacoin - to literally put money where the smiley face used to be. In so doing, MARX intended to create an application for Belacoin which would drive up the price of this “dead” cybocurrency.

MARX and ROUGHTON spent considerable time and money marketing Belacam. While Belacam did generate a small amount of advertising revenue, the real plan was that Belacam would create interest, and correspondingly, value in the coin. Instead, MARX and ROUGHTON propped up the value of the coin through

their manipulative trading and profited along the way to the detriment of investors. MARX was even more successful with the Belacoin scam and he took home over \$2.4 million. MARX used that money to buy a luxury SUV and \$1.86 million home in Virginia Beach in July 2018.

Bitcointalk, a popular forum for investors, had a chatroom devoted to Belacoin. MARX and ROUGHTON used this chatroom to provide Belacoin updates and increase its value. MARX and ROUGHTON used the platform to make both promotional and false statements about Belacoin, especially with regards to MARX's prior association with 1CR.

On October 1, 2016, MARX and ROUGHTON posted:

Bela was originally founded as 'Bellacoin' in early 2014. The Ambia Fund took over development and community management in 2016, and we have built wallets, updated Bela's source code, updated the logo and name, and given Bela a real-life use: Belacam. Belacam is a social media site for photo sharing where likes are monetized. With over 3,500 users in the Beta testing and Belacam Gamma in development, the site is poised to be one of the first real social media economies, powered by the Bela blockchain. We've established a new company, Live Bela LLC, to maintain and update Bela's source code with the mission of making Bela the easiest cryptocurrency to use and build upon. Our goal is to make Bela the goto token when entrepreneurs want to utilize crypto for their startups. If you want to create a project or startup that uses Bela, be sure to get in touch!

Later that day, MARX and ROUGHTON posted additional information:

"Bela mining started back in 2014 when it was originally launched as 'Bellacoin.'
Belacam is in open beta right now at Belacam.com, but the site is buggy and

deposits are closed. Belacam Gamma, the much better (and nearly final) version of the site will be going through a security audit before being opened up to the public, and we're extremely excited for that! The Lightning Network is Litecoin code, and we will be integrating it after our hard fork to update Bela's code to match Litecoin's." Later on October 1, 2016, in response to an inquiry, MARX noted that one of the benefits of Belacoin was that it was already listed on Poloniex.

On October 20, 2016, MARX wrote, "We just hired an extra developer, and he begins work today on the Bela hard fork to Litecoin code. The project is estimated to take 600 hours, and he's going to try to get that done in 8 weeks. We'll weekly progress updates on how that's coming."

In late November 2016, word began to spread online that MARX and ROUGHTON were behind 1CR. MARX and ROUGHTON understood that if the truth came out, that would have fatal consequences for Belacoin. MARX and ROUGHTON agreed that they should lie and deny their prior involvement in 1CR. On November 25, 2016, MARX and ROUGHTON posted a statement on Bitcointalk which stated: "Belacam is our inaugural project, meaning we have not worked with a coin before. For you, @weilichesbin [the other forum participant], this means that we have never worked with 1CR, CGA, or any other coin besides Belacoin. Furthermore, we have been 100% upfront with what we are doing with Belacoin." They continued, "Going forth, we suggest members of this thread

simply ignore @weilichesbin."

On December 19, 2016, MARX and ROUGHTON doubled down on their lie. Apparently, a member of the community found a post in which showed both the 1CR and Belacoin logos together. MARX then made up a lie and stated that the 1CR logo was only used a "placeholder" and that they had no association with 1CR. He called it a "coincidence" that Belacoin and 1CR appeared together. MARX stated, "As we've stated before Belacoin is our first and only cryptocurrency investment." MARX then "apologized" to 1CR for using their logo without consent.

On June 18, 2017, MARX stated, "Just under 7 days until we hard fork and activate Dark Gravity Wave! Track the countdown here." MARX posted similar hype on June 24 and June 25.

On July 1, 2017, MARX posted a deceptive statement about the relationship between the entities which he controlled. "Belacam is where we make our money. Unlike you, The Ambia Fund doesn't earn anything when Belacoin's price doubles. Therefore, we are taking as much time as needed to make Belacam Gamma as great as we want it to be. Please keep in mind that Belacam Gamma is a private business, separate from the Belacoin currency." On July 2, 2017, MARX issued a post looking for Belacoin miners and promised that mining Belacoin was 250% more profitable than mining Bitcoin.

On December 12, 2017, MARX wrote, "When the hard fork is a little closer and the code is finalized, we'll be instructing and helping everyone prepare. For the last hard fork, Poloniex updated their wallets, so people who just kept their Bela on the exchange were automatically updated safely. For those who are out of the loop, we are forking the 2017 Litecoin blockchain. It's not long before Bela has all the tech that LTC has." On December 21, 2017, MARX wrote, "There's a surprise on our GitHub Is that the new code for the upcoming hard fork?"

On June 1, 2018, in response to a question about when Belacam will be launched, MARX wrote, "We were aiming for June, but now, we think we will want a little more time to market it. We expect Belacam to be done with the development phase sometime in the next 3 weeks, but a more realistic full launch is sometime in July. We want 3 - 4 weeks of marketing and promotion time before the launch begins so that we can generate enough hype and have a great launch day."

On June 28, 2018, MARX posted, "We've got a big announcement coming out any day now. In the name of transparency, I'm going to share some details now, but some will have to stay a secret until the press release goes out. We do have a very successful investor in The Ambia Fund (The Ambia Fund owns Live Bela LLC and Belacam, Inc., so that money flows right to Bela-related operations). Details on who it is (and more stuff like that) will have to be saved until the press

release. We anticipate the press release to be picked up by Market Watch, Yahoo Finance, and other similar sites due to the strong and well-known reputation of the investor."

On July 19, 2018, MARX wrote, "1,630 pre-registrations for Belacam, which launches tomorrow at 9am EST. Get ready for the \$BELA community to EXPLODE in growth!" On July 28, 2018, MARX wrote, "Well there's no decline here! We launched our main product, Belacam, 8 days ago. We're up to nearly 15,000 users so far and adding hundreds / thousands each day."

In furtherance of the Belacoin scheme, MARX and ROUGHTON made numerous false statements. These statements included:

- 2/26/2017: The Ambia Fund does not own a massive amount of Belacoin that we dump when prices look good.
- 11/25/2016: Belacam is our inaugural project, meaning we have not worked with a coin before . . . this means we have never worked with 1CR, CGA, or any other coin besides Belacoin.
- 12/19/2016: As we've stated before, Belacoin is our first and only cryptocurrency investment. In a lengthy post, MARX then falsely stated that 1CR information found by a user on the Ambia Fund's website was "fake investments for placeholder purposes only."

- 7/1/2017: Belacoin is where we make our money. Unlike you, The Ambia Fund doesn't earn anything when Belacoin's price doubles.

A more complete review of the promotional and false statements for Belacoin was included in the government's response to the Bill of Particulars.

Belacoin trading records from late 2016 through late 2017 show that MARX and ROUGHTON were engaged in the same manipulative trading that characterized their 1CR activity—except that they were able to keep the pump and dump going longer. Thus, MARX and ROUGHTON successfully moved the price of Belacoin from around \$0.00291 per coin (in September 2016) to about \$0.2168 per coin (in July 2017), an increase of over 7,350%. After their manipulations ended, Belacoin returned to its pre-hype value of \$0.00185 per coin (as of February 2021).

D. Wire Fraud Counts

The wire fraud counts pertain to trades between MARX and ROUGHTON and various victims in EDPA in order to establish venue. While MARX and ROUGHTON stole more than \$2.4 million those losses were spread over more than 6,000 traders - resulting in an average loss of only \$400. Few investors lost significant sums and large percentage of the investors lived overseas.

The government's evidence will establish venue through the following trades occurring in the Eastern District of Pennsylvania.

- Count Two = A May 14, 2017, transaction in which MARX sold Victim JR 875 Belacoins. Victim JR (Poloniex User 10277312) purchased 875 Belacoins from MARX (Poloniex User 10076741) at a rate of 0.0001135 BRC.
- Count Three = A January 30, 2017, transaction in which MARX sold Victim TC 341,509.7285 Belacoins. On January 30, 2017, Victim TC (Poloniex User 10101351) bought a total of 414,866.5 Belacoins in three transactions at 12:29am (the charged count), 12:35am and 1:53am. All of these purchases were from MARX (Poloniex User 10076741). He bought these at a rate of 0.0000146 BTC (first and third transactions) and 0.000155 BTC (second transaction).

III. Elements of the Offenses

A. Conspiracy

To prove a conspiracy, in violation of 18 U.S.C. § 1349, the government must prove four elements:

- First: That two or more persons agreed to commit an offense against the United States, as charged in the Superseding Indictment;
- Second: That the defendant was a party to or member of that agreement; and
- Third: That the defendant joined the agreement or conspiracy knowing of its objective to commit an offense against the

United States and intending to join together with at least one other alleged conspirator to achieve that objective; that is, that the defendant and at least one other alleged conspirator shared a unity of purpose and the intent to achieve a common goal or objective, to commit an offense against the United States; and

B. Wire Fraud

In order to prove a defendant guilty of carjacking, in violation of 18 U.S.C. § 2119, the government must establish beyond a reasonable doubt each of the following elements of the offense.

First: That the defendant knowingly devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises;

Second: That the defendant acted with the intent to defraud; and

Third: That in advancing, furthering, or carrying out the scheme, the defendant transmitted any writing, signal, or sound by means of a wire, radio, or television communication in interstate commerce or caused the transmission of any writing, signal, or sound of some kind by means of a wire, radio, or television communication in interstate commerce.

IV. Potential Legal Issues

A. Summary Charts

The government intends to introduce various summary charts into evidence to summarize the messages, financial records, and other matters pursuant to Rule 1006 of the Federal Rules of Evidence. In this case, the financial records are very voluminous and not all of them will be admitted. Notably, there is no requirement that all of the voluminous evidence supporting a chart or graph be introduced into evidence as a precondition to the introduction of those charts. United States v. Strissel, 920 F.2d 1162, 1163 (4th Cir. 1990).

B. Convergence

The government's evidence at trial will show that not all the victims relied upon the false statements of MARX and ROUGHTON in choosing to invest in 1CR and Belacoin. First, the government is not required to prove reliance. See United States v. Yeager, 331 F.3d 1216, 1221 (11th Cir. 2003) ("proof of actual reliance by the victim and proof of damages are not required").

Second, the government does not have to prove convergence between the traders who read the false statements and the victims who lost money. In United States v. Porat, 76 F.4th 213 (2023), the Third Circuit rejected the defendant's argument that he could not be convicted of wire fraud unless the prosecution proved "convergence", meaning that the party the defendant deceived was the

same party the defendant defrauded of money or property. In Porat, the defendant supervised a scheme to submit false information to U.S. News in order to inflate the rankings of the business school of which he was dean. The court further noted that the evidence established convergence because the defendant's false statements about the MBA program deceived the students who later enrolled as well as U.S. News. The Third Circuit held that the wire fraud statute does not require convergence requirement for wire fraud - that is, a requirement that the defendant deceive the same party he defrauds of money. Id.

C. Promotional Statements

As described above, the government's evidence of the charged fraud scheme includes both (1) promotional statements hyping 1CR and Belacoin to drive up the price and (2) false statements about 1CR and Belacoin to help induce traders to buy these coins. All statements made in furtherance of the conspiracy made by MARX and ROUGHTON, including promotional statements that, standing alone, may not necessarily be considered false or misleading, can still be properly considered as overt acts in furtherance of the fraud conspiracy. See United States v. Gordon, 710 F.3d 1124, 1141 (10th Cir. 2013) (holding that the government properly used promotional "fax blasts, e-mails and the brochures" to convict defendant of wire fraud in a "pump and dump" scheme). In Gordon, the 10th Circuit found that *many* - but not *all* aspects - aspects of the information

disseminated in the promotional campaigns were false and misleading. Id. at 1142-43. This technique is common in many fraud schemes. The 10th Circuit also found that the defendant "manipulated the price [of the stock] in order to make a profit" in a very similar method to the case at bar. Id.; accord United States v. Ware, 577 F.3d 442, 448 (2d Cir. 2009) (concluding that the evidence was sufficient to convict the defendant of securities fraud in a "pump-and-dump" scheme where he sent out press releases—regarding a company in which he owned millions of shares—that "fabricated ... [the] sources of [the] factual information" in the press releases and failed to disclose the true sources of the funds allowing for release of the press releases).

Most investment fraud schemes contain a mix of true and false statements. A swindler who only told prospective investors false statements would be hard pressed to earn their trust and steal their money. By mixing the true and the false statements, swindlers earn the trust of their victims while simultaneously deceiving them. This case is no different. As illustrated above, MARX and ROUGHTON's promotional statements in which they touted 1CR and Belacoin were as important to the fraud scheme as the demonstrably false statements. Of course, an overt act itself need not be criminal in nature if considered apart from the conspiracy. Braverman v. United States, 317 U.S. 49, 53 (1942); United States v. Palmeri, 630 F.2d 192, 200–01 (3d Cir. 1980).

D. Expert Witnesses Present During Testimony

At trial, the government will present the testimony of multiple expert witnesses who will render opinions based upon the trial evidence. For this reason, the government will request that the Court allow the expert witnesses to watch the trial testimony and confine their testimony accordingly.

This request is permitted under Rules 615 and 703 of the Federal Rules of Evidence. Rule 615 exempts from sequestration persons essential to the presentation of its case, such as expert witnesses. Rule 703 permits experts to base their opinions on facts and data made known to them “at or before the hearing.” Accord, Opus 3 Ltd. v. Heritage Park, Inc., 91 F.3d 625, 629 (4th Cir. 1996) (“Indeed, an expert who is not expected to testify to facts, but only assumes facts for purposes of rendering opinions, might just as well hear all of the trial testimony so as to be able to base his opinion on more accurate factual assumptions.”)

E. SARs

Title 31, Section 5318(g)(2)(A)(ii) addresses the disclosure of Suspicious Activity Reports (SAR) by government employees:

(ii) no officer or employee of the Federal Government or of any State, local, tribal or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Release of a SAR may jeopardize an ongoing investigation, alert criminals, disclose bank methods to detect suspicious activity, or alienate customers. Cotton v. PrivateBank and Trust Co., 235 F.Supp.2d 809, 815 (N.D. Ill. 2002). According to DOJ policy, if a SAR contains potential exculpatory information, the relevant information can be provided to defense counsel in a letter without providing any information about the SAR itself. DOJ policy mandates that prosecutors and agents should not disclose a SAR, either in its entirety or in redacted form without approval from DOJ and FinCEN's Office of General Counsel.

At trial, the government will not be presenting any evidence of SARs. If defense counsel asks any witness about SARs, the government will object and the Court should sustain the objection pursuant to 31 U.S.C. § 5318(g)(2)(A)(ii).

F. Forfeiture

The indictment in this case gives notice that the government will seek to forfeit the proceeds of the wire fraud violations charged in the indictment, but the indictment does not list specific assets to be forfeited. Although the indictment lists the fraud proceeds at \$3.6 million, the government expects that the evidence at trial will show the fraud proceeds are \$2.4 million.

While a defendant has a right for a jury to consider forfeiture of specific assets, this right only to specific assets that the government alleges to constitute or be derived from proceeds obtained from the wire fraud scheme. There is no right

to have the jury determine the amount of a money judgment that the defendant will be ordered to pay. Thus, to the extent that the government here is seeking a money judgment, Rule 32.2 specifically provides that this Court must determine the amount of any money judgment that the defendant will be ordered to pay. See Fed.R.Crim.P. 32.2(b)(1)(A). See also United States v. Tedder, 403 F.3d 836, 841 (7th Cir. 2005) (defendant's right under Rule 32.2(b) is to have the jury determine if the government has established the required nexus between the property and his crime; the rule does not give the defendant the right to have the jury determine the amount of a money judgment); United States v. Gregoire, 638 F.3d 962, 972 (8th Cir. 2011) (following Tedder). Accord United States v. Ponzo, 2014 WL 3893790, *2 (D. Mass. 2014) (court submits the forfeiture of specific assets to the jury, at defendant's request, but overrules defendant's objection that the amount of money judgment should have been determined by the jury as well).

V. Conclusion

The government's evidence will prove beyond a reasonable doubt each of the elements of the offenses charged.

Respectfully submitted,

JACQUELINE C. ROMERO
United States Attorney

/s/ Robert J. Livermore
ROBERT J. LIVERMORE
J. JEANETTE KANG
Assistant United States Attorneys

Date: July 8, 2024

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Government's Trial Memorandum has been served this date by electronic filing to:

Eric Samuel Rosen, Esquire
erosen@dynamisllp.com

Joseph G. Poluka, Esquire
poluka@blankrome.com

Huaou Yan, Esquire
huaou.yan@blankrome.com

Robert S. Frenchman, Esquire
rfrenchman@dynamisllp.com

Counsel for Tyler Marx

/s/ Robert J. Livermore
ROBERT J. LIVERMORE
Assistant United States Attorney

Dated: July 8, 2024